REMARKS

The above-referenced patent application has been reviewed in light of the Final Office Action referenced above. Claims 4-16, 18-35, 37, 41-42, 52-59, 61, 63, 72-100 are currently pending. Claims 60, 62, 64-68, were previously withdrawn in response to a restriction requirement. Claims 9-11, 15, 18-19, 23, 26-27, 30, 41-47, 52, 54, 58-59, 61, 76-78, 80-82, and 88 are currently amended. Assignee should note that these amendments are made to clarify Assignee's claimed subject matter, and do not narrow the scope of claimed subject matter. For example, claim 11, has been amended to remove the phrase "and preferably about a week". For an additional example, claims 9, 23, and 30 have been amended to remove the phrase "the step of". Accordingly, Assignee does not intend to surrender claimed subject matter by submission of the above amendments and no prosecution history estoppel should apply. No new matter has been presented.

Claims 4-10, 12-16,18-35, 37, and 41-42, 52-59, 61, 63, 72-77, and 79-100 stand rejected under 35 USC § 102(e) as being anticipated by US patent publication no. 2002/0056118 of Hunter, et al. (hereinafter "Hunter"). Claim 11 stands rejected under 35 USC § 103(a) over Hunter. Claim 78 stands rejected under 35 USC § 103(a) over Hunter in view of Dodson et al., U.S. Patent No. 6,184,877 (hereinafter "Dodson"). Claims 43-48 stand rejected under 35 USC § 103(a) over Hunter in view of Maruo, U.S. Patent No. 6,757,909 (hereinafter "Maruo"). Reconsideration of the above-referenced patent application in view of the following remarks is respectfully requested.

1.   **The Examiner has not established a *prima facie* basis for the rejections under 35 USC 102.**

As is well-established, to make a *prima facie* rejection under 35 USC 102, the Examiner must provide a prior art document that includes each and every element and limitation of the rejected claim or claims. If even a single limitation is not present in the cited document, then the Examiner has failed to make a proper rejection under 35 USC 102.

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Assignee respectfully disagrees with the Examiner's contention regarding the inherent teaching of Hunter. As is well settled law, in order to establish inherency, "the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). *See also* MPEP § 2163.07(a). In the present case the Examiner has not established any basis for the inherency rejections in the above-referenced office action. The Examiner has not established that the missing descriptive matter is necessarily present in the reference. The Examiner has also not established that the missing descriptive matter would be recognized by one of ordinary skill. The Federal Circuit has recently stated that to establish inherent anticipation it must be shown that "the disclosure [of the cited document] is sufficient to show that the natural result flowing from the operation as taught [in the cited document] would result in the claimed [subject matter]." SmithKline Beecham Corp. v. Apotex Corp., 403 F3d 1331, 1343 (Fed. Cir. 2005). The Examiner has failed to show that the natural result from the operation of the teaching of Hunter would result in Assignee's claimed subject matter. Accordingly, Assignee respectfully asserts that these rejections have been traversed.

More specifically, the Examiner states that "metadata comprises information such as time stamp which determine begin and end date of movie must be included so that the certain movie is remained in storage for a period of time, say one week, regardless of the traffic through storage." Office Action dated April 21, 2006, page 5. However, Hunter does not teach how to determine when to remove a movie from storage. While Assignee does not believe and/or concede this to be the case, the Examiner has at most shown "that a certain thing may result from a given set of circumstances," which is "not sufficient" as a matter of law to establish inherency. In light of this, Assignee respectfully asserts that the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill," as required by

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MPEP § 2163.07(a) and the Court of Appeals for the Federal Circuit. Therefore, it is respectfully asserted that the Examiner's rejections on this basis has been traversed and should be withdrawn.

In addition, Hunter teaches away from using metadata to determine when to remove a movie from storage. Specifically, Hunter discloses a "'first in, first out' write-over protocol would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, with the exact time depending on how many customer selected movies are downloaded during that period." See Hunter, paragraph 0139 (emphasis supplied). Hunter goes on to explain that "[t]he objective is for the storage module 230 to have available for on-demand viewing a large percentage of movies that any particular customer may be interested in at any given time – or at least have those movies available to the customer over a period of time as new entries into storage overwrite older entries." See Hunter, paragraph 0141 (emphasis supplied). In addition, Hunter states "However the expression of movies preferences is made, this information may be used alone, or in conjunction with other information, to permit the customer's user station to download to memory (e.g., fifteen movie capacity) an ongoing, rolling selection of movies that will most likely match the preferences of the customer." See Hunter, paragraph 0142 (emphasis supplied). In addition, Hunter states that "[w]hile a first-in-first-out protocol may be used for overwriting onto the hard drive of module 230, the catalogue information may serve to establish a different protocol that will overwrite the less likely to be purchased movies ahead of those recordings which, by analysis at module 340, show more promise for being viewed by the customer." See Hunter, paragraph 0144. Hunter does not, as the Examiner asserts, teach a system wherein analysis of metadata is used to determine when movies are made available for viewing. While Hunter does mention transmitting content availability / scheduling data to a decoder, it does not teach, inherently or otherwise, how to use that data as recited in any of Assignee's independent claims.

With respect to the merits of the Examiner's rejection we begin with claim 4. Specifically, Hunter does not teach "permitting analysis of the metadata to determine when to make the movie

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available for viewing," as recited in Assignee's claim 4. The Examiner readily admits that at least this portion of Assignee's claim 4 is not explicitly taught by Hunter. Instead the Examiner asserts that this aspect of Assignee's claim 4 is inherently taught by Hunter. However, the Examiner does not provide any basis for this assertion. While Hunter does mention availability/ scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 4. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Nowhere in Hunter does it teach "permitting the analysis of the metadata to determine when to make the movie available for viewing," as recited in Assignee's claim 4. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 4 has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 9, Hunter does not teach, inherently or otherwise, "repeatedly re-broadcasting movie data to ensure that the entire movie is received by the set-top box," as recited by Assignee's claim 9. In rejecting this claim, the Examiner states that Hunter teaches that "movies are broadcast every 30 minutes from 5:30 pm to 8:30 pm, and several other times daily." While Assignee does not concede that the Examiner's characterization of Hunter is correct in this regard, it is clear from the Examiner's own understanding of Hunter that Hunter does not teach each and every element of Assignee's claim 9. Specifically, Hunter makes no mention of "repeatedly re-broadcasting movie data to ensure that the entire movie is received by the set-top box" as recited by Assignee's claim 9. Hunter make no mention of "re-broadcasting movie data." In light of this, it is respectfully asserted that the Examiner's rejection has been traversed and the Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 10, Assignee respectfully asserts that Hunter does not teach, inherently or otherwise, "effecting removal of the movie data representing one or more movies stored on the set-top

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box at a time determined by the content provider," as recited by Assignee's claim 10. In rejecting this claim, the Examiner asserts that "the content provider controls the downloading of movies into the set top box ... Thus, the movie data representing one or more movie stored on the set top box is effectively removed at the time determined by the content provider (e.g. when the new movie is downloaded or when the period of time designated for certain new release movies to remain is expired)." However, Assignee respectfully asserts that the Examiner has misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, <u>with the exact time depending on how many customer selected movies are downloaded during that period</u>." See Hunter, paragraph 0139 (emphasis supplied). As discussed above, the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill," because Hunter does not teach "effecting removal of the movie data representing one or more movies stored on the set-top box at a time determined by the content provider," as recited in Assignee's claim 10. Therefore, Assignee respectfully asserts that this rejection has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 15, Hunter does not teach, inherently or otherwise, "repeatedly re-broadcasting movie data to ensure that the entire movie is received by the set-top box," as recited by Assignee's claim 15. In rejecting this claim, the Examiner states that Hunter teaches that "movies are broadcast every 30 minutes from 5:30 pm to 8:30 pm, and several other times daily." While Assignee does not concede that the Examiner's characterization of Hunter is correct in this regard, it is clear from the Examiner's own understanding of Hunter that Hunter does not teach each and every element of Assignee's claim 15. Specifically, Hunter makes no mention of "repeatedly re-broadcasting movie data to ensure that the entire movie is received by the set-top box" as recited by Assignee's claim 15.

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Hunter makes no mention of "re-broadcasting movie data." In light of this it is respectfully asserted that the Examiner's rejection has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 18, Assignee respectfully asserts that Hunter does not teach, inherently or otherwise, "remotely controlling when to make data available for viewing by the user; and remotely controlling when to remove data from the set-top box," as recited by Assignee's claim 18. Assignee respectfully asserts that the Examiner has misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, with the exact time depending on how many customer selected movies are downloaded during that period." See Hunter, paragraph 0139 (emphasis supplied). As discussed above, the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill," because Hunter does not teach "remotely controlling when to make data available for viewing by the user; and remotely controlling when to remove data from the set-top box," as recited by Assignee's claim 18. Therefore, Assignee respectfully asserts that this rejection has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 23, Assignee respectfully asserts that Hunter does not teach, inherently or otherwise, "providing software for operating the remote hardware device to process the metadata and manage the content according to its associated metadata," as recited by Assignee's claim 23. Assignee respectfully asserts that the Examiner has misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not teach a system that manages "content according to its associated metadata." For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and

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available for on-demand viewing for approximately two weeks, <u>with the exact time depending on how many customer selected movies are downloaded during that period</u>." See Hunter, paragraph 0139 (emphasis supplied).   As discussed above, the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill," because Hunter does not teach "remotely controlling when to make data available for viewing by the user; and remotely controlling when to remove data from the set-top box," as recited by Assignee's claim 23. Therefore, Assignee respectfully asserts that this rejection has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 26, Hunter does not teach, inherently or otherwise, "analyzing the metadata to determine when a movie should be made available," as recited by Assignee's claim 26. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 26. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Nowhere in Hunter does it teach permitting the analysis of the metadata to determine when to make the movie available for viewing," as recited in Assignee's claim 26. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 26 has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 30, Hunter does not teach, inherently or otherwise, "having said content provider repeatedly re-broadcast said movie data to ensure that the plurality of full movies are received by the set-top box," as recited by Assignee's claim 30. In rejecting similar claim language, the Examiner states that Hunter teaches that "movies are broadcast every 30 minutes from 5:30 pm to 8:30 pm, and several other times daily." While Assignee does not concede that the Examiner's characterization of Hunter is correct in this regard, it is clear from the Examiner's own understanding of

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Hunter that Hunter does not teach each and every element of Assignee's claim 30. Specifically, Hunter makes no mention of "having said content provider repeatedly re-broadcast said movie data to ensure that the plurality of full movies are received by the set-top box" as recited by Assignee's claim 30. Hunter makes no mention of "re-broadcasting movie data." In light of this it is respectfully asserted that the Examiner's rejection has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 37, Hunter does not teach, inherently or otherwise, "analyzing the associated data to determine when the movies should be made available for viewing," as recited by Assignee's claim 37. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 37. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Nowhere in Hunter does it teach permitting the analysis of the metadata "to determine when to make the movie available for viewing," as recited in Assignee's claim 37. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 37 has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 41, Hunter does not teach, inherently or otherwise, "a processor capable of executing software, processing data received through the antenna and tuner, and capable of processing user input commands to permit access to the stored movie data under predetermined control conditions derived from the metadata," as recited by Assignee's claim 41. The Examiner asserts that "code keys for decryption of encoded movies, ID header information for determining the movie is available or interested to the user decrypting the movies once the user is authorized to access the movie" teaches the recited language from claim 41. Assignee respectfully disagrees with the Examiner's asserted position. Based on the Examiner's own assertion regarding Hunter, it is clear that

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Hunter does not teach the "a processor capable of executing software, processing data received through the antenna and tuner, and capable of processing user input commands to permit access to the stored movie data under predetermined control conditions derived from the metadata" because there is no discussion in Hunter of deriving control conditions from the metadata. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 41. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Hunter makes no mention of "control conditions derived from the metadata" as recited by Assignee's claim 41. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 41 has been traversed and respectfully requests that the rejection be withdraw.

With regard to claim 52, Hunter does not teach, inherently or otherwise "analyzing of the metadata to determine when to make the movie available for viewing," as recited in Assignee's claim 52. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 52. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Hunter makes no mention of "analyzing metadata" as recited by Assignee's claim 52. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 52 has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 59, Hunter does not teach, inherently or otherwise, "removing the movie data representing one or more movies stored on the set top box at a time determined by the content provider," as recited by Assignee's claim 59. Assignee respectfully asserts that the Examiner has

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misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, <u>with the exact time depending on how many customer selected movies are downloaded during that period</u>." See Hunter, paragraph 0139 (emphasis supplied). As discussed above, the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill," because Hunter does not teach "removing the movie data representing one or more movies stored on the set top box at a <u>time determined by the content provider,</u>" as recited by Assignee's claim 59. Therefore, Assignee respectfully asserts that this rejection has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 72, Hunter does not teach, inherently or otherwise, "permitting analysis of the metadata to determine when to make the video available for viewing," as recited by Assignee's claim 72. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 72. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Hunter makes no mention of "permitting analysis of the metadata to determine when to make the video available for viewing," as recited by Assignee's claim 72. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 72 has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 83, Hunter does not teach "the metadata being utilized by the set top box to delete the content," as recited by claim 83. Assignee respectfully asserts that the Examiner has

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misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, with the exact time depending on how many customer selected movies are downloaded during that period." See Hunter, paragraph 0139 (emphasis supplied). As discussed above, the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill." Therefore, it is respectfully asserted that the Examiner's rejection of claim 83 on this basis has been traversed and should be withdrawn.

With regard to claim 88, Hunter fails to teach or suggest "transmitting metadata including the instruction to delete specific content from the set top box, the set top box having logic therein capable of interpreting the instruction and deleting the previously stored content referenced in the instruction," as recited in Assignee's claim 88. Assignee respectfully asserts that the Examiner has misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, with the exact time depending on how many customer selected movies are downloaded during that period." See Hunter, paragraph 0139 (emphasis supplied). Again, the Examiner concedes this point and argues that the cited portions of Hunter inherently disclose Assignee's claimed subject matter. As discussed above, Assignee respectfully asserts that the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill." Thus, Assignee respectfully Asserts that the Examiner's rejection has been traversed and Assignee respectfully requests that the rejection be withdrawn.

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With regard to claim 91, Hunter does not teach, inherently or otherwise, "transmitting metadata to a set top box, the metadata being associated with content previously stored on the set top box, the metadata being utilized by the set top box to make the content unavailable to a user," as recited by Assignee's claim 91 (emphasis supplied). Assignee respectfully asserts that the Examiner has misconstrued the teaching of Hunter. Specifically, in Hunter the content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data. For example, Hunter states that its system uses a "first in, first out" write-over protocol that "would permit each automatically downloaded movie to remain in storage module 230 and available for on-demand viewing for approximately two weeks, with the exact time depending on how many customer selected movies are downloaded during that period." See Hunter, paragraph 0139 (emphasis supplied). Again, the Examiner concedes this point and argues that the cited portions of Hunter inherently disclose Assignee's claimed subject matter. As discussed above, Assignee respectfully asserts that the Examiner has failed to clearly show "that the missing descriptive matter is necessarily present in [Hunter], and that it would be so recognized by persons of ordinary skill." Thus, Assignee respectfully Asserts that the Examiner's rejection has been traversed and Assignee respectfully requests that the rejection be withdrawn.

With regard to claim 95, Hunter does not teach, inherently or otherwise, "analyzing each of the sets of metadata to determine if the set of metadata meets pre-determined criteria established by the content provider for displaying the movie associated with the set of metadata in a listing of available movies for viewing in a user interface associated with the set top box," as recited by Assignee's claim 95. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 95. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140.

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Hunter makes no mention of "analyzing each of the sets of metadata to determine if the set of metadata meets pre-determined criteria established by the content provider for displaying the movie associated with the set of metadata in a listing of available movies for viewing in a user interface associated with the set top box," as recited by Assignee's claim 95. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 95 has been traversed and respectfully requests that the rejection be withdrawn.

With regard to claim 98, Hunter does not teach, inherently or otherwise, "establishing pre-determined criteria that determine whether content should be displayed; ... and transmitting the metadata to the set top box so that the metadata is analyzed to determine if the pre-determined criteria is met, the content being made available for viewing if the pre-determined criteria is met," as recited by Assignee's claim 98. Again, while Hunter mentions availability/scheduling data, it does not teach a system wherein this data is used as recited in Assignee's claim 95. Hunter only discloses a system wherein "[t]he user station downloads movies to the intermediate storage in storage module 230 just as if the recording had been preselected by the customer. The graphical user interface alerts the customer that the recordings are available by a cue such as 'YOU'VE GOT FLICKS'." See Hunter, paragraph 0140. Hunter makes no mention of "analyzing each of the sets of metadata to determine if the set of metadata meets pre-determined criteria established by the content provider for displaying the movie associated with the set of metadata in a listing of available movies for viewing in a user interface associated with the set top box," as recited by Assignee's claim 98. For at least these reasons, Assignee respectfully asserts that the Examiner's rejection of claim 98 has been traversed and respectfully requests that the rejection be withdrawn.

Assignee respectfully asserts that the remaining claims rejected under 35 USC § 102 patentably distinguish over Hunter for at least the same and/or similar reasons as the claims discussed above. Assignee therefore respectfully asserts that these rejections have been traversed and respectively requests that the rejections be withdrawn.

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2.   **The Examiner has failed to establish a _prima facie_ basis for the rejections under 35 USC 103.**

To establish a _prima facie_ case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the cited documents themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited documents or to combine teachings from those documents. Second, there must be a reasonable expectation of success. Finally, the cited documents (or cited documents when combined) must teach or suggest all the claim limitations of the rejected claims. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the cited documents, and not based on Assignee's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As discussed above, Hunter does not teach, inherently or other wise, all of the elements of the respective base claims of claims 11, 43-48, and 78. The documents cited by the Examiner, do not cure these deficiencies. Thus, Assignee respectfully asserts that these rejections have been traversed and respectfully requests that the rejection be withdrawn.

In addition, the Examiner has cited no teaching or motivation to combine the teachings of the cited documents. To establish a _prima facie_ case for obviousness, the Examiner must establish some suggestion or motivation, either in the cited patents themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited documents or to combine their teachings. The Examiner has not cited any portion of the cited documents that would suggest combining their respective teachings. Likewise, the Examiner has not established a suggestion or motivation to combine the cited patents from knowledge generally available to one of ordinary skill. The Examiner merely asserts that it would have been obvious to combine the teachings of the cited documents. In light of the Examiner's failure to establish a suggestion or motivation to combine the cited documents it

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is respectfully asserted that the Examiner has failed to establish a _prima facie_ case that the rejected claim is obvious. Again, Assignee respectfully requests that this rejection be withdrawn.

For at least the reasons above, Assignee respectfully submits that claims 4-16, 18-35, 37, 41-48, 52-59,61-63, and 72-100 all patentably distinguish over the documents cited by the Examiner and respectfully requests that they be allowed to proceed to allowance. While additional arguments may exist for distinguishing the cited documents, the foregoing is believed sufficient to address the Examiner's rejections. Likewise, failure of the Assignee to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead it is believed that the Examiner's positions are rendered moot by the foregoing and, therefore, it is believed not necessary to respond to every position taken by the Examiner with which Assignee does not agree.
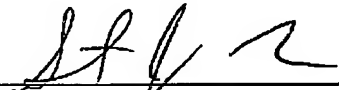
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CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the claims pending in this patent application are in condition for allowance. If the Examiner has any questions, he is invited to contact the undersigned at (503) 439-6500. Consideration of this patent application and early allowance of all the claims is respectfully requested.

Please charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account number 50-3130.

Respectfully submitted,

Dated: _____9-21-06_____

Steven J Munson

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